

BOARD OF APPEALS CASE NO. 011

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BEFORE THE

APPLICANT: Morton J. Miller and
Anthony J. Piccinini

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ZONING HEARING EXAMINER

REQUEST: Rezone 72± acres from
GI (General Industrial) to CI
(Commercial Industrial), eastside of
MD Route 24, near intersection of
MD Route 23, Forest Hill

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 10/17/85 & 10/24/85

HEARING DATE: March 5, 1986

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Record: 10/16/85 & 10/23/85

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ZONING HEARING EXAMINER'S DECISION

The Applicants are Morton J. Miller and Anthony Piccinini. Messrs. Miller and Piccinini are the fee simple owners of 81 acres, more or less, situated in the northwest quadrant of MD Route 23 and MD Route 24, south of the Village of Forest Hill. The parcel is designated as Parcel 49 on Zoning Map No. 40. The Applicants are requesting a down zoning of 72 acres from GI (General Industrial) to CI (Commercial Industrial).

The Applicants called Ms. Jacqueline Magness, a former staff member of the Department of Planning and Zoning, and Mr. Robert Lynch, presently Director of the Department of Planning and Zoning, as adverse witnesses. The Applicants also offered the testimony of the Honorable Cypert O. Whitfill, former County Councilman Edward G. Rahll, Morton J. Miller, who is one of the Applicants, Denis Canavan, who testified as an expert land planner, and John Cairnes, who testified as an expert real estate appraiser and broker.

No protestants appeared in opposition to the request, except Ms. Magness and Mr. Lynch from the Department of Planning and Zoning. The testimony of the witnesses and exhibits presented established the following facts: The subject parcel was zoned A-1, Agricultural (65 acres), R-1, Suburban Residence (2 acres), and M-1, Light Industrial (14 acres), as part of the original comprehensive zoning of Harford County in 1957, and retained that zoning until the 1982 Comprehensive Rezoning, when a portion of the A-1 and the R-1 segment of the property were rezoned to VR, Village Residential (9 acres), and the balance of approximately 72 acres was rezoned to the GI, General Industrial classification. Properties to the north are zoned VR, and the Forest Hill Industrial Airpark to the east is zoned

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CI. The Klein property to the south, across MD Route 23, is zoned R2 and B2. The Vaughn property, across Route 24 to the west, is zoned AG. There are several lots zoned VR across Route 24 and to the west of the subject parcel.

The subject property will be served by the Maryland American Water Works and sewer will be provided by Harford County, pursuant to a Public Works Agreement (Applicants' Exhibit No. 15). The subject property will be served by a development road which will intersect MD Route 24, north of MD Route 23.

In 1969 and again in 1973, the Applicants attempted to have a portion of the 81 acre tract rezoned; however, both attempts to rezone failed, partially due to neighborhood opposition. The 1969 and 1973 efforts to rezone the parcel by the Applicants was opposed by Cypert O. Whitfill, who represented several neighboring property owners. During the course of the earlier rezoning attempts, the neighboring property owners, through their attorney, Mr. Whitfill, had expressed to the attorney representing the Applicants a willingness to support the rezoning in exchange for certain conditions. In early 1981, just prior to the initiation of the Comprehensive Rezoning of Harford County, the Applicants contacted Mr. Whitfill to see if Mr. Whitfill's clients were still willing to enter into an agreement. Based on that conversation and negotiations, an agreement was entered into by the Applicants and the neighbors (Applicants' Exhibit No. 16).

The agreement provided as follows:

Mr. Miller and Mr. Piccinini agreed,

1. that no retail use will be located within 400 feet of the easterly right-of-way line of Route 24.
2. to establish the entrance road as shown on the site plan attached to that agreement.
3. to limit the type of sign to be located at the entrance of the property.
4. that the triangular portion of land shown on the plat (the buffer) would be zoned either agricultural or residential to create a buffer area.
5. that the buffer could only be used for agricultural and residential uses.

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6. to demolish the existing buildings in the buffer area when they begin to develop their property.
7. to landscape and maintain the buffer area.
8. to plant a screening of evergreens along MD Route 24.
9. The parties agree that Messrs. Miller and Piccinini's obligations and the agreement were contingent upon the property being zoned for M-1, Light Industrial, or a compatible district under future zoning ordinances.

The Applicants believe that the agreement (Applicants' Exhibit No. 16), is still in force and they are prepared to fulfill their obligations if this application is granted.

After the agreement was negotiated, the Applicants engaged Mr. Whitfill to act as their attorney in connection with the request to rezone the property to M-1, Light Industrial, as part of the 1982 Comprehensive Rezoning of Harford County. It was explained that, when the application was submitted in May 1981, there were no drafts of the new Zoning Code and no one knew what zoning classifications would be available under the new Code. Therefore, Mr. Whitfill made his request for M-1, Light Industrial, based upon the 1957 Ordinance. During the summer of 1981, drafts of the Zoning Code were developed, and it was disclosed that there would be two industrial districts; light industrial and general industrial. By letter dated September 1, 1981, Mr. Whitfill requested Guy W. Hager, then Director of the Department of Planning, to zone the subject property to the LI, Light Industrial, District (Applicants' Exhibit No. 28).

Prior to the completion of the first set of proposed zoning maps, Mr. Miller, Mr. Piccinini, and Mr. Whitfill met with Ms. Magness, the District Planner for District No. 9. During the course of that meeting, the contents of the agreement between the Applicants and the neighbors (Applicants' Exhibit No. 16) were discussed. It was based upon this discussion of the agreement that the VR (Village Residential) District line was established to create approximately 9 or 10 acres of land to serve as a buffer along Route 24, between Route 24 and the industrial zone land to the east. By letter dated October 22, 1982, the Department of Planning and Zoning advised Mr. Miller and Mr. Piccinini that their property was proposed to be zoned VR and LI (Light Industrial).

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As a result of dissatisfaction from many property owners and the County Council, the Council revised the proposed Zoning Code by deleting provisions of the industrial district as originally recommended by the Department of Planning and Zoning. During the course of the consideration of the industrial district, there was a proposal to create a community industrial district (CI). In place of the Light Industrial and General Industrial zoning classifications, the County Council and Planning Department developed CI (Commercial Industrial), GI (General Industrial), and ORI (Office/Research Industrial) zoning classification to take the place of the originally proposed LI and GI Districts. As a result of the deletion of the LI District and the creation of the CI and ORI District as part of the Zoning Code, it became necessary to revise the Zoning Maps. It was at this point, in late May or early June 1982, that the zoning classification of the subject property was changed from LI (Light Industrial) to GI (General Industrial).

In 1982, Robert Lynch was a planner on the staff of the Department of Planning and Zoning. Mr. Lynch, along with Mr. Hager, Ms. Magness, and Uri Avin, Deputy Director, reviewed the maps. With respect to the LI and GI parcels, Mr. Lynch and Mr. Hager reviewed all the zoning maps to determine whether the properties shown as LI and GI should now carry the new CI, ORI, or GI classifications. Mr. Lynch said that there were a number of policies that were considered, but there was no set written criteria that was followed. One major policy referred to by both Mr. Lynch and Ms. Magness in their testimony was that they were instructed by the Harford County Council not to downzone any property without notification to the property owners. Mr. Lynch testified that he was not aware that a portion of the subject parcel was zoned M-1 in 1957 and that he was not aware of the agreement with the neighbors (Applicants' Exhibit No. 16).

Mr. Whitfill testified that he did not recall being told the property was zoned GI in 1982. He said he did not recall any controversy concerning the property, and made no presentation to the County Council regarding the application. Mr. Whitfill said he was surprised when he learned in 1985 that the property had been zoned GI. It was his understanding that the property would be zoned Light Industrial. Mr. Whitfill said that the Department of Planning and Zoning did not send him written notice that the proposed zoning classification had been changed from LI to GI.

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Mr. Edward G. Rahll was a member of the Harford County Council and voted on the 1982 Comprehensive Zoning Code and Zoning Maps. Mr. Rahll said he believed, at the time of his vote on the Zoning Maps, that the Miller and Piccinini property was receiving the zoning classification that Mr. Miller, Mr. Piccinini, and the neighbors had agreed upon, pursuant to Applicants' Exhibit No. 16. Mr. Rahll said he was aware of the agreement between Mr. Miller, Mr. Piccinini, and the neighbors, and understood the neighbors were supporting the zoning of the property, and that he was not told by the Department of Planning and Zoning that it had changed its recommendation from Light Industrial to General Industrial zoning.

Mr. Denis Canavan qualified as an expert in matters of land planning. He testified that, in his opinion, it was a mistake to zone the property as GI, General Industrial, in 1982 and that the property should have been zoned CI, Commercial Industrial. The evidence showed that it was a policy of the Department of Planning and Zoning, as dictated by the Harford County Council, that the Comprehensive Rezoning was not to downzone property without giving notice to the owners. Specifically, a property that had been zoned M-1 was to be zoned CI, and property that was zoned M-2 was to be zoned GI. He said that although 14 acres of the subject property had been zoned M-1 in 1957, the property was mistakenly zoned GI contrary to the policy of the Department of Planning and Zoning and the Harford County Council. Mr. Canavan said that in the testimony of both Ms. Magness and Mr. Lynch, and the Staff Report filed in the case indicates that the property was completely zoned agricultural prior to 1982 Comprehensive Rezoning. He said both were unaware that a portion of the property had been zoned M-1. The County Council and the Department of Planning and Zoning also failed to consider the agreement between the owners of the property and the neighboring property owners. Mr. Canavan said the County Council did not have an opportunity to weight the consequences of the zoning of the property as GI because the Council had not been made aware of the agreement (Applicants' Exhibit No. 16), nor was the County Council made aware that 14 acres of the property had been zoned M-1 since 1957. The witness further testified that, in his opinion, the CI, Commercial Industrial district is compatible to the M-1, Light Industrial classification, and that the GI, General Industrial is not compatible to the M-1, Light Industrial zone classification.

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Mr. John Cairnes testified as an expert real estate appraiser and broker. Mr. Cairnes testified that there is a demand for land zoned Commercial Industrial, which were permit retail and service uses in the Forest Hill area. He said that most users who want heavy industrial zoning want to locate in the Route 40/I-95 corridor due to the road network in that area. He felt that there was a sufficient amount of land zoned GI in the Forest Hill area at the Greater Harford Industrial Park, and the Reimenschneider property.

CONCLUSION:

In Maryland, before a parcel of land can be rezoned, there must be evidence of mistake in the zoning classification, or a change in the character of the neighborhood since the last comprehensive rezoning. In this case, the Applicants did not rely upon a change in the character of the neighborhood. Rather, the Applicants allege that there was a very definite mistake made in the last comprehensive. The uncontradicted evidence of the witnesses called by the Applicants was that the Harford County Council did not consider the following facts:

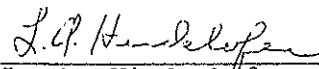
1. The Harford County Council did not know or appreciate that the subject property was subject to an agreement between the owners and neighboring property owners which provided that the property would be zoned for M-1 or another compatible district. The County Council did not know that the agreement was contingent upon the subject property being zoned from M-1 or a compatible district so that, if the property was zoned GI, Mr. Miller and Mr. Piccinini are not obligated to provide the buffer, setback, screening, use restrictions and landscaping, which is required in the agreement.
2. The County Council did not realize that 14 acres of the property was already zoned M-1. Mr. Lynch and Ms. Magness were under the mistaken impression that all of the property had been zoned A-1, Agricultural, prior to the 1982 rezoning. Therefore, they felt free to zone it for any district. They did, however, acknowledge the policy of the Department of Planning and Zoning and that Harford County Council in providing CI zoning for parcels which had been zoned M-1, and providing GI zoning for parcels that had been zoned M-2. The Forest Hill Industrial Park property, which adjoins the subject parcel, was zoned M-1 and received a CI zoning in the 1982 Comprehensive.

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It is the finding of the Hearing Examiner that the CI zoning classification is more restrictive than a GI zoning district and the CI District has greater screening requirements and more restrictions on outside storage. Further, the Hearing Examiner further finds that will be less adverse impact on neighboring properties if the property is zoned CI rather than its present classification of GI. It is further the finding of the Hearing Examiner that the Applicants' request for CI complies with the Master Plan, and there has been no showing of any harm that would result from zoning the property to the CI classification, evidenced by the fact that no protestants testified in opposition to the Applicants' request.

Therefore, it is the recommendation of the Hearing Examiner that the Applicants' request to down zone 72 acres, more or less, from the GI, General Industrial classification, to the CI, Commercial Industrial classification, is hereby recommended.

Date April 25, 1986



L. A. Hinderhofer
Zoning Hearing Examiner